

PUBLIC CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification of) Docket No.
the Los Esteros Critical Energy) 01-AFC-12
Facility)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 24, 2002

9:15 a.m.

Reported by:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Presiding Member

James D. Boyd, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Major Williams, Hearing Officer

Michael Smith, Advisor

Susan Bakker, Advisor

STAFF AND CONSULTANTS PRESENT

Robert Worl, Project Manager

Dick Ratliff, Staff Attorney

Natasha Nelson

Eric Knight

Gary Reinoehl

PUBLIC ADVISER

Grace Bos

APPLICANT

Jane E. Luckhardt, Attorney
Downey, Brand, Seymour and Rohwer
representing Calpine Corporation

Todd Stewart, Project Manager
Juan Garrahan, Architect
Calpine C*Power

Jerry P. Salamy, Air Quality Engineer
CH2MHILL

ALSO PRESENT

Bud Koch

Zeynep Koch

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P R O C E E D I N G S

9:15 a.m.

PRESIDING MEMBER KEESE: We'll call this hearing to order. We're still having some difficulty with our phone. Evidently the number we published is not operable. So, we're going to start anyway, and if we have to backtrack a little, we'll backtrack a little.

This is a Committee Conference by Committee of the California Energy Commission on the proposed Los Esteros Critical Energy Facility.

I'm Bill Keese, Presiding Member. And my Advisor, Mike Smith, is to my right. Commissioner Jim Boyd is the Second on this Committee to the left. The Commission Public Adviser, Grace Bos, is sitting -- was sitting in the back row. And if anyone has any questions about the process please contact Grace.

Before we begin let's do the parties. Applicant, Ms. Luckhardt.

MS. LUCKHARDT: Hi, my name's Jane Luckhardt. I'm from the firm of Downey, Brand, Seymour and Rohwer, representing Calpine in this proceeding, Los Esteros Critical Energy Facility.

MR. STEWART: My name is Todd Stewart;

1 I'm the Project Manager for the Los Esteros
2 Critical Energy Facility project with Calpine.

3 CHAIRMAN KEESE: Thank you. Staff.

4 MR. RATLIFF: I'm Dick Ratliff, Counsel
5 for Staff.

6 MR. WORL: Robert Worl; I'm the Project
7 Manager for Los Esteros project.

8 CHAIRMAN KEESE: Do we have anybody from
9 City of San Jose? Seeing none. Any other
10 representatives of government entities? Any
11 members of the public who would like to be
12 particularly introduced at this time, although you
13 have the right to comment later anyway?

14 All right. Major Williams is our
15 Hearing Officer. Would you take over, Major.

16 HEARING OFFICER WILLIAMS: Thank you and
17 good morning. Before we get into our agenda we
18 need to address a few housekeeping matters.

19 The first matter, I think, for the
20 record is that the City of Milpitas has withdrawn
21 as a party intervenor in this matter. We note
22 that for the record.

23 I would also note that we have scheduled
24 a special business meeting on July 2nd at 10:00
25 a.m. here in Hearing Room A on the PMPD.

1 In terms of the record, we left the
2 visual resources section open at our last hearing
3 to take evidence on a settlement agreement between
4 the applicant and the City of Milpitas.

5 After our hearing we learned that the
6 settlement agreement apparently had been
7 terminated, and that the parties could not reach
8 an agreement.

9 Applicant, is there anything further
10 that needs to be placed in the record on the
11 settlement agreement?

12 MS. LUCKHARDT: Since that time,
13 Milpitas reconsidered their earlier decision and
14 decided to accept the settlement agreement with
15 some minimal changes. And we can file the revised
16 and now accepted settlement agreement with you.

17 We're still waiting for Milpitas'
18 signatures to have a complete copy with all
19 signatures on it. If you would prefer, we could
20 file one without the signatures. But that's what
21 we have at this point.

22 HEARING OFFICER WILLIAMS: Well, in the
23 interest of keeping things moving, I think it
24 would be the Committee's preference that we accept
25 a copy of what you have.

1 MS. LUCKHARDT: Okay.

2 HEARING OFFICER WILLIAMS: And we'll
3 accept your representation that it's a done deal.

4 MS. LUCKHARDT: Okay. Then we can -- I
5 have a copy here that I can have filed and served
6 on everyone. It has a signature from Calpine on
7 it, but does not have the City of Milpitas'
8 signatures.

9 HEARING OFFICER WILLIAMS: Okay. We'll
10 accept that agreement as the next in order. And
11 with that we'll close the record on visual
12 resources. And we'll close the record on all
13 evidentiary matters in this proceeding.

14 The Committee's purpose here today is to
15 take comments on the Presiding Member's Proposed
16 Decision.

17 On May 30, 2002 the Committee designated
18 to conduct proceedings in the Los Esteros matter
19 issued the Presiding Member's Proposed Decision
20 recommending that the Commission approve the
21 application for certification for the Los Esteros
22 Critical Energy Facility as proposed by Calpine
23 C*Power.

24 The 30-day comment period will end on
25 July 29, 2002. And as I indicated earlier, a

1 notice has scheduled a special business meeting of
2 the Commission -- June 29th. If I said July,
3 excuse me. The special business meeting has been
4 scheduled by notice for July 2nd at 10:00.

5 The Committee has received written
6 comments from applicant and staff which we will
7 discuss today. If the comments and edits proposed
8 by the parties do not substantively change the
9 Committee's findings and conclusions, no revised
10 PMPD will be issued.

11 The Committee will distribute a list of
12 errata to be incorporated into the PMPD upon
13 consideration by the full Commission.

14 As Chairman Keese indicated, Grace Bos,
15 who is our Public Adviser's representative, is
16 here. If any members present today wish to
17 discuss what we're doing here today that I haven't
18 covered, be sure to talk to Grace about it.

19 And I think with that, applicant, we'll
20 proceed with the comments.

21 MS. LUCKHARDT: Okay. We have sat down
22 and looked at staff's comments and our comments.
23 And I'm just wondering how you'd like me to go
24 through them. I mean I can go through ours
25 specifically, and I can go through our reaction on

1 staff's. Do you want me to do that all at the
2 same time?

3 HEARING OFFICER WILLIAMS: Well, --

4 MS. LUCKHARDT: However? Okay.

5 HEARING OFFICER WILLIAMS: It's up to
6 you.

7 MS. LUCKHARDT: All right. Our
8 comments, the introduction was simply a discussion
9 of what our comments included. Let's see. We
10 have a few corrections to the project description
11 section dealing with spelling of folks' names;
12 clarification of the project size; project site
13 acreage; just very, you know, kind of editorial
14 glitches that we're trying to catch. I don't
15 think there's anything profound there.

16 We have one short edit in the compliance
17 plan addressing the need for Commission Staff to
18 comply with the construction injury prevention
19 program when they come onsite. Probably requires
20 hard hats, appropriate clothing and those types of
21 issues. Just want to make sure that that's
22 recognized.

23 And then in regard to facility design,
24 we have one correction that we would like to note
25 which deals with -- it's on page 51 of the PMPD.

1 There's a footnote 28 which currently reads that
2 day limitations may be subject to an extension.
3 And it's our understanding that what you really,
4 or what is typically provided is that there's some
5 flexibility.

6 And so instead of using extension, we
7 were asking the day limitations be allowed to be
8 adjusted, either up or down, with the agreement of
9 the CBO or the CPM where it applies to the CPM as
10 opposed to the CBO. So that's what we're looking
11 for there.

12 We just have one correction, just to
13 correct the bullet point above that in our
14 comments dealing with the injection system.

15 But most of these things that I'm going
16 over right now are really just little glitches
17 that we found, to make sure that the document is
18 accurate.

19 Staff proposed some changes to facility
20 design and we have no objection to staff's changes
21 that they proposed on page 58 and page 63. Both
22 of those are fine.

23 We have one correction to power plant
24 reliability --

25 PRESIDING MEMBER KEESE: Let me just

1 ask, staff, you have no particular problem with
2 what they're --

3 MR. RATLIFF: No.

4 MS. LUCKHARDT: We have no objection --
5 oh, okay.

6 PRESIDING MEMBER KEESE: Okay, I don't
7 want to come back.

8 MR. WORL: Should we raise our hand if
9 we come to a --

10 PRESIDING MEMBER KEESE: I think --

11 MS. LUCKHARDT: Do we want to go by
12 section?

13 PRESIDING MEMBER KEESE: If we're going
14 section by section, let's just make sure we're all
15 okay.

16 MS. LUCKHARDT: Okay.

17 HEARING OFFICER WILLIAMS: Excuse me,
18 before we go any further I think we've got our
19 phone line connection.

20 (Pause.)

21 HEARING OFFICER WILLIAMS: Is there
22 anybody on the line for the Los Esteros matter?

23 MS. BOS: For the record, I'm Grace Bos,
24 Associate Public Adviser. Mr. Garbett has no
25 phone, so we, the Public Adviser's Office, he's

1 going to call us in a few minutes and we'll give
2 him the new phone number.

3 HEARING OFFICER WILLIAMS: Okay, great.

4 MS. BOS: Which we're doing presently.

5 HEARING OFFICER WILLIAMS: Okay, we'll
6 bring him up to date.

7 Okay, sorry about the interruption.

8 MS. LUCKHARDT: That's all right. We
9 have one minor correction on power plant
10 reliability. Staff, do you have any concerns?

11 MR. WORL: No.

12 MS. LUCKHARDT: We have one minor
13 comment on power plant efficiency, correcting the
14 identification of the combustion turbines.

15 We have no objection to staff's
16 correction or agree with staff's correction to
17 transmission system engineering.

18 And those moves us into air quality, I
19 believe is where all the next comments are. We
20 have a variety of comments on air quality.

21 We have no objection to staff's -- in
22 fact, we both did approximately the same
23 correction to condition AQ8 on page 133.

24 And primarily our comments on the air
25 quality section go to making the air quality

1 section almost exact, if not exactly, consistent
2 with the final determination of compliance. And
3 clarifying where staff has required additional
4 conditions, that that is a staff required or
5 Commission condition and not part of the final
6 determination of compliance. So that when folks
7 are looking at both documents, or one or the
8 other, it's very easy to tell which documents,
9 which conditions are consistent with the final
10 determination of compliance, and which conditions
11 are Commission conditions that are in addition to
12 the final determination of compliance.

13 And that's primarily what all of our
14 comments are as they go through the air quality
15 conditions.

16 PRESIDING MEMBER KEESE: Okay, on the
17 AQ8, did you say, for Mr. Williams' benefit, did
18 you say you'll take either language, yours or
19 staff's? Or do we want to agree on one right now?

20 MS. LUCKHARDT: The corrections are the
21 same, I think. We added additional information
22 into the verification. And we have no objection
23 to staff's correction, which is the same as our
24 correction to the condition, itself. Which is
25 changing a 400/100 reference to the 100 hours.

1 And then we have added language to the
2 verification to make it consistent with that.

3 PRESIDING MEMBER KEESE: You got that?

4 HEARING OFFICER WILLIAMS: Yes.

5 MS. LUCKHARDT: Is that my --

6 MR. WORL: Our staff had been in contact
7 with Sierra Research who had done the work, and
8 they worked through this together to insure
9 consistency. And our decision was to support
10 rather than duplicate.

11 PRESIDING MEMBER KEESE: Thank you.

12 MS. LUCKHARDT: Okay, so then am I to
13 understand from that, then, that staff has no
14 objection to the rest of applicant's as to air
15 quality?

16 MR. WORL: That's correct.

17 MS. LUCKHARDT: Okay. Because all of
18 those are basically to make it consistent with the
19 DOC.

20 And we can go over any one of those if
21 you have specific questions, but otherwise they're
22 pretty clear, I think in redline/strikeout. If
23 there are any questions I'll clarify that.

24 No questions? Okay. Shifting to public
25 health we have a couple of corrections within the

1 text itself, and we also agree with staff's
2 correction on page 156, which is different from
3 applicant's, but we agree with those, as well.

4 And then staff has a correction to the
5 hazardous materials management section, and we
6 have no objection, and agree with staff's
7 corrections to hazardous materials.

8 We also agree with staff's corrections
9 to worker safety and fire protection. And that
10 puts us into biology.

11 Looking at staff's comment it refers to
12 page 186 of the PMPD, footnote 94. And we would
13 like to suggest a correction of staff's
14 correction. So if you have staff's edit in front
15 of you, the staff comments, in the second sentence
16 of staff's requested insertion beginning with:

17 The artesian slough, the LACDF does not discharge
18 to the artesian slough, so our edits to staff's
19 would be continuing with staff's language:

20 artesian slough, which. We would delete "would".

21 We would add "and as to receive" so it would read:

22 Which receives the, which is existing, and instead
23 of proposed projects, we would use the WPCP, which
24 is the wastewater pollution control plan. So it's
25 WPCP, I believe it's defined in the document

1 earlier. Possessive wastewater.

2 So it would read: artesian slough,
3 which receives, plural, the WPCP, as wastewater,
4 and then the remainder.

5 Was I clear?

6 MR. WORL: You were okay with that one,
7 yes.

8 HEARING OFFICER WILLIAMS: Yes.

9 MS. LUCKHARDT: Okay, that --

10 PRESIDING MEMBER KEESE: Staff, okay?

11 MR. WORL: And staff's okay with that.

12 MS. LUCKHARDT: Okay. Staff's comment
13 on page 191, correcting the acreage amounts, I
14 think we're fine with staff's comments until we
15 get up into the conditions, themselves.

16 So, staff's comments on pages 191
17 through 205, 208, we agree with. And then
18 shifting back to our comments which deal with BIO-
19 10 on page 212, we have discussed this with staff,
20 and it's my understanding, and Bob Worl can
21 correct me if I'm wrong, is that our requested
22 change to the first sentence of BIO-10 is
23 acceptable because we don't have a U.S. Fish and
24 Wildlife Service biological opinion for this
25 project.

1 MR. WORL: Natasha.

2 MS. LUCKHARDT: So, that our redline/
3 strikeout to that first sentence, I believe,
4 correctly addresses the situation.

5 We had a correction to the protocol
6 number 8. Staff has requested that we not make
7 that correction, and has clarified that their
8 intent is not to have U.S. Fish and Wildlife
9 approve the hardware, but just that we be using
10 standard hardware and cloth that U.S. Fish and
11 Wildlife typically approves. And so we're fine
12 with leaving that as is. So we do not need to
13 make any changes to the protocol paragraph 8.

14 MS. NELSON: Yes, staff is just saying
15 approved for us. Would you like to replace the
16 word "by"? Approved by and say approved for use.

17 MS. LUCKHARDT: That's great.

18 MS. NELSON: By the U.S. Fish and
19 Wildlife Service and --

20 MS. LUCKHARDT: Okay.

21 MS. NELSON: -- California Department of
22 Fish and Game.

23 MS. LUCKHARDT: Thank you for that
24 correction.

25 HEARING OFFICER WILLIAMS: So how will

1 it read now?

2 MS. LUCKHARDT: It would read it's
3 approved for use by, right? So you would add in
4 by in that number 8, after approved, we would add
5 the words "for use" and then leave the rest of the
6 sentence. So it would read: That are approved
7 for use by the U.S. Fish and Wildlife Service and
8 California Department of Fish and Game.

9 And then we discussed with staff edits
10 to number 9 of that protocol. And the first line
11 of number 9 staff had requested, or the PMPD had
12 required that we inspect trenches every six hours.

13 We requested that we do it at shift
14 changes because there would be folks working in
15 the trench. And that, I understand, was
16 acceptable to staff. So that it would read,
17 instead of every six hours, every 12 hours in the
18 first line.

19 MS. NELSON: We would agree that the
20 word "and" does need to be submitted.

21 MS. LUCKHARDT: Right.

22 MS. NELSON: And prior to the beginning
23 of construction.

24 MS. LUCKHARDT: Yes. So, after it would
25 be -- okay, so basically what we're doing is we're

1 taking staff's requested change to page 213, item
2 number 9, with a corrected first sentence.

3 And what we are changing is in staff's
4 comment, it would change from six hours to 12
5 hours; and then we're fine with the rest of
6 staff's edit.

7 Am I now finally clear? All right.

8 PRESIDING MEMBER KEESE: Well, does that
9 first sentence make sense now?

10 MS. LUCKHARDT: Well, it gets changed.
11 It should read: Staff's -- let's see, it should
12 read: Inspect trenches every 12 hours for
13 entrapped animals and prior to the beginning of
14 construction any area that has been unattended for
15 over three hours.

16 PRESIDING MEMBER KEESE: Okay.

17 MS. LUCKHARDT: So both of those apply.

18 PRESIDING MEMBER KEESE: All right.

19 MS. NELSON: Right, that would give the
20 maximum protection, is to have both in place.

21 PRESIDING MEMBER KEESE: That makes
22 sense, I understand now.

23 MS. LUCKHARDT: Yeah. Okay, and then
24 staff's corrections to BIO-11, we agree with
25 staff's corrections to BIO-11. To give some

1 flexibility so it doesn't have to be exactly 20
2 days prior to start of construction.

3 And then we have a correction on BIO-16
4 on page 216, and my understanding is that that is
5 also acceptable to staff, given that U.S. Fish and
6 Wildlife Service is not providing a biological
7 opinion in this case.

8 So we would request that we delete the
9 last part of the condition: and U.S. Fish and
10 Wildlife Service. And that's in our comments.

11 And then staff requested changes to --
12 moving on to cultural resources, unless you have
13 further --

14 MS. NELSON: No.

15 MS. LUCKHARDT: Moving on to cultural
16 resources, staff requested changes to the language
17 of the decision and the conditions. We're fine
18 with everything until you come down to Cultural-5
19 on page 230.

20 Where they're making changes to
21 notification of noncompliance. Requesting that we
22 basically call within 24 hours, which is fine.
23 And then that we provide email or fax detailing
24 the noncompliance issue, and the measures
25 necessary to achieve resolution.

1 It just seems to make sense that we
2 would call within 24 hours and be given a slightly
3 longer period to provide measures necessary to
4 achieve resolution. And so we are requesting that
5 where staff has inserted the last phrase of
6 staff's insertion, which is issue within 24 hours
7 of CRS notification; that that 24-hour period be
8 changed to 72 hours to give us time to develop
9 measures necessary to achieve resolution.

10 Calling within 24; and then emailing and
11 providing measures necessary to resolution within
12 72 hours. That's what we're requesting. I don't
13 know if staff has a reaction or not.

14 MR. WORL: We have Gary Reinoehl here;
15 he's our cultural resources specialist.

16 MS. LUCKHARDT: And we haven't had a
17 chance to chat with Gary.

18 HEARING OFFICER WILLIAMS: Do you want
19 some time, a couple minutes?

20 MS. LUCKHARDT: Well, just do you have
21 any immediate reaction?

22 MR. REINOEHL: Immediate reaction.
23 Well, we try to --

24 HEARING OFFICER WILLIAMS: Why don't we
25 do this, why don't we just take a couple minutes,

1 go off the record and let you talk.

2 MS. LUCKHARDT: Okay.

3 HEARING OFFICER WILLIAMS: Just briefly.

4 (Off the record.)

5 MS. LUCKHARDT: Okay.

6 HEARING OFFICER WILLIAMS: I take it

7 we've reached some sort of --

8 MS. LUCKHARDT: We have reached --

9 HEARING OFFICER WILLIAMS: -- sort of
10 accommodation?

11 MS. LUCKHARDT: We have. What we would
12 request on staff's proposed change to Cultural-5
13 is in the second sentence of the additional
14 language that they are proposing for verification
15 3, that we replace -- the second sentence reads:
16 Project owner shall provide an email or fax
17 detailing the noncompliance issues and the" and we
18 would replace "measures necessary" with
19 "recommended corrective action."

20 So that the sentence would read: The
21 project owner shall provide an email or fax
22 detailing the noncompliance issue and the
23 recommended corrective action to achieve
24 resolution of the issue within 24 hours of the CRS
25 notification.

1 So that means that we're giving staff
2 notice of our initial thoughts on corrective
3 action, but that that may change as everybody
4 works through it to fine the appropriate solution.

5 HEARING OFFICER WILLIAMS: Is that
6 acceptable?

7 MR. REINOEHL: That is acceptable.

8 HEARING OFFICER WILLIAMS: Okay, thank
9 you, sir.

10 MR. REINOEHL: Thank you.

11 MS. LUCKHARDT: And staff's change to
12 Cultural-6 is fine. We have no objection to that.

13 Okay, that moves us to staff's
14 corrections to geology and paleontology. And
15 we're fine with staff's corrections to the
16 conditions there.

17 That moves us to soil and water. Looks
18 like we both saw some edits that were needed to
19 paragraphs in soil and water. Our first comment
20 to the first full paragraph is just changing the -
21 - correcting the acreage amounts.

22 We still need the changes to the second
23 full paragraph which just corrects the which water
24 goes to water separators, and which water flows in
25 catch basins and different directions.

1 And then as we move down into what is
2 the paragraph that starts: A 750-foot lineal.
3 That's the paragraph that we're addressing right
4 now. We had recommended changes to it, and staff
5 had recommended a new paragraph.

6 What we would suggest is that we delete
7 that paragraph, "a 750-foot lineal," since it
8 really addresses the combined cycle discharge.
9 Which will be coming to you shortly. We'll all be
10 doing this again.

11 And that we instead, in its place, use
12 staff's paragraph dealing with the simple cycle
13 discharge that is the evidence that has come in
14 front of you. And we would make a couple of
15 changes to staff's paragraph to make it
16 consistent.

17 In the second sentence that reads: At a
18 time a, and it should be, I think, "at that time a
19 new outfall" is how that should read. So instead
20 of "at that time a permanent" it should be "at
21 that time a new outfall to the interior levee wall
22 of Coyote Creek channel will be necessary."

23 And then in the second sentence, it
24 says: The proposed interim, and interim should be
25 deleted. It should be "the proposed stormwater

1 outfall used during simple cycle operation will
2 consist of." So we would delete "interim" in that
3 sentence.

4 And then the entire section refers to
5 the simple cycle, the plan for the simple cycle
6 project, expecting that we will address the
7 combined cycle facilities shortly, when we are
8 back in front of you again on the combined cycle
9 project.

10 HEARING OFFICER WILLIAMS: I'm looking
11 at staff's change, and the first sentence refers
12 to the Santa Clara Valley Water District. The
13 second sentence, I take it, is where you are
14 making the change that I didn't get?

15 MS. LUCKHARDT: Right. The second
16 sentence says: At that time -- that's my problem,
17 I'm not reading it right -- "at that time a
18 permanent" which should be replaced with "new".
19 And that's the only change there.

20 And then the following sentence, just
21 delete "interim." And then I think we're fine.
22 And then we would propose that that paragraph
23 replace the paragraph that starts: A 750-foot
24 lineal, on page 247.

25 And then that takes care of all the

1 comments on those paragraphs.

2 Then staff made a comment on page 247,
3 paragraph four. We're fine with that. I think
4 we're fine with the rest of staff's comments.
5 Well, maybe not.

6 Staff's comment to page 247, paragraph
7 four, would be deleted, because we think that the
8 entire paragraph should be deleted and be
9 addressed within the combined cycle process of
10 this project. So it will be the next stage, when
11 you see us again. So that's our recommendation
12 there. Okay.

13 Sorry, this is getting a little tricky.
14 Now we're back to our comments on page 250, which
15 are not inconsistent with staff. We're just doing
16 corrections on 250, doing corrections on 251; 252
17 we have some corrections to soil and water-1, to
18 clarify it and make it easier for everyone to
19 understand.

20 We have corrections to page 252 to soil
21 and water-3 to the verification to make it
22 consistent with the condition. And we both have
23 corrections to page 253. Staff has made a fine
24 correction of improving the acronym. And then we
25 have a clarification to the verification of soil

1 and water-4, which is also on page 253.

2 And then as we go down through the rest
3 of our soil and water corrections, I believe these
4 are just corrections to clarify them. And to make
5 it consistent with the staff supplement. I don't
6 believe staff has any issues with the remainder of
7 our corrections.

8 MR. WORL: That's correct.

9 MS. LUCKHARDT: And so now we're
10 shifting to staff's correction to soil and water-
11 9. Staff had requested that the Committee add
12 accepted into soil and water-9, which is okay if
13 we change the verification from 120 days to 30
14 days. Recognizing the fact that an accepted
15 engineer's report requires that it go through
16 another entity, and that will take more time.

17 MR. WORL: In our discussions that was
18 fine with our staff, as well. In reading that,
19 the 120 days was inconsistent with the accepted
20 report.

21 MS. LUCKHARDT: So I guess the combined
22 comments are to add accepted into the condition
23 where staff has it noted, and then to modify the
24 verification to 30 days prior as opposed to 120.

25 HEARING OFFICER WILLIAMS: Is that

1 written anywhere?

2 MS. LUCKHARDT: Do you have staff's
3 comments in front of you?

4 HEARING OFFICER WILLIAMS: Um-hum. Yes.

5 MS. LUCKHARDT: If you look at staff's
6 comments, they have -- is accepted the only new
7 thing on yours, Bob?

8 MR. WORL: Yeah, that was the -- we just
9 wanted to insure that it was an accepted
10 engineer's report which basically meant that it
11 had gone through the agency review. That was our
12 proposed change. We did not look at the
13 verification. When our staff did look at the
14 verification they said the 120 -- they saw clearly
15 that the 120 days was inconsistent with wanting an
16 accepted engineer's report.

17 MS. LUCKHARDT: So if you look at the
18 condition, itself, staff is proposing that they
19 add accepted, the word "accepted", just prior to
20 engineer's report on the second line of the
21 condition, itself. And then --

22 HEARING OFFICER WILLIAMS: The
23 verification.

24 MS. LUCKHARDT: -- verification goes to
25 30 days.

1 HEARING OFFICER WILLIAMS: From 120 to
2 30?

3 MS. LUCKHARDT: 120 to 30.

4 HEARING OFFICER WILLIAMS: Okay.

5 MS. LUCKHARDT: And then we are fine
6 with staff's corrections to soil and water-10.

7 And then I think that moves us into land
8 use. We have a couple of corrections in land use.
9 I don't believe that either of those are
10 controversial with staff.

11 MR. WORL: No.

12 MS. LUCKHARDT: And then we go into
13 noise. And there are various corrections that we
14 have, just some simple corrections. An extension
15 and a verification from 15 days to 30 days of
16 noise-4, to allow us time to prepare and submit
17 the report, the post-construction monitoring
18 report. And my understanding is that staff is
19 acceptable with that change.

20 MR. WORL: Right.

21 MS. LUCKHARDT: And we have no problem
22 with all of staff's corrections to the noise
23 section. So those are all fine.

24 Okay, and that takes us to visual
25 resources. On visual resources staff's

1 corrections to the body of the document, I
2 believe, are fine with us. Yeah, which is 329,
3 the comments to 340; 342, there are two comments
4 there, those are fine.

5 And then I think that takes us into our
6 comments on the conditions, 348. Okay, and then
7 as we look at VIS-2, I guess there's one question
8 I would like to answer before -- or I would like
9 you guys to give us some guidance on.

10 We had provided comments that reflected
11 the agreement and specifically stated in reference
12 to the agreement with Milpitas. And it is our
13 understanding that the Commission would prefer we
14 not specifically reference that agreement, is that
15 correct? Or is that incorrect?

16 HEARING OFFICER WILLIAMS: Let's go off
17 the record.

18 (Off the record.)

19 PRESIDING MEMBER KEESE: I guess staff
20 has seen the document?

21 MR. RATLIFF: Their proposed language we
22 have seen, yes. And we do have some difficulties
23 with the references they've made to the Milpitas
24 agreement as being the condition.

25 PRESIDING MEMBER KEESE: I have no

1 problem -- let's speak generically about private
2 MOUs that are outside of our process. You know,
3 we certainly seek everybody coming to agreement.
4 And the fact that the applicant and Milpitas have
5 come to agreement is fine.

6 I think we need to know the nature of
7 the agreement as it impacts this project, as it is
8 laid out to us by staff, so that we see whether we
9 can be in agreement with everything that's in
10 there. If there are things in the agreement that
11 are inconsistent with what staff is telling us,
12 then we're going to have to deal with those.

13 So, without knowing that at this moment,
14 it's difficult to say --

15 MS. LUCKHARDT: Yeah, that's fine. We
16 can -- we had included in our comments references
17 to that agreement. And I guess then I'd like to
18 hear from staff whether that is a problem to them,
19 and whether I need to modify that.

20 And specifically I'm looking at our
21 comments to VIS-2 to start off with.

22 MR. WORL: We have Eric Knight here to
23 speak to that.

24 MR. KNIGHT: The problem with the
25 comments on page 348, VIS-2, says: consistent

1 with the settlement and release agreement between
2 the applicant and the City of Milpitas, 180 days
3 after reaching the simple cycle commercial
4 operation date, the project owner shall complete
5 treatment of all project structures.

6 It's very common in our conditions, this
7 one in particular, that require the treatment --

8 PRESIDING MEMBER KEESE: Is your
9 microphone on?

10 MR. KNIGHT: The green light's on.

11 PRESIDING MEMBER KEESE: Much better.

12 MR. KNIGHT: The problem with the way
13 it's amended by the applicant, the treatment
14 wouldn't be completed until 180 days after
15 reaching simple cycle commercial operation date,
16 which I think is defined somewhere in the
17 agreement. And I think that may be March 2003,
18 which would push implementation of this condition
19 out to September, as late as September '03.

20 And our condition always requires that
21 the treatment be completed prior to commercial
22 operation.

23 MS. LUCKHARDT: I think what we're
24 reflecting here is that in working with Milpitas
25 one of the things that they wanted, and in order

1 to, you know, address some of the issues that we
2 thought we were asked to address by this Committee
3 and by Milpitas, was some architectural treatment
4 of the facility, itself.

5 And in order to allow time to get
6 resolution on what that architectural treatment
7 should be, and to have a chance to work with
8 Milpitas to get approval from staff, we tied the
9 overall treatment of the facility to the dates
10 that are in the agreement with Milpitas, which are
11 180 days after reaching simple cycle commercial
12 operation, as that is defined in the facilities
13 contract. So that we have a defined date; it's
14 not just a floating date.

15 But we felt that we needed time to
16 develop that. And that having us complete this
17 prior to first turbine roll there's no way we
18 could get agreement from everybody and get the
19 facilities installed within that amount of time.

20 Because we're talking about within a
21 range of, you know, quite a commitment on
22 Calpine's part to do some improvements to the
23 facility. And I don't see how we can do all that,
24 and have that completed prior to first turbine
25 roll.

1 PRESIDING MEMBER KEESE: Okay, you are
2 agreeing -- let me ask staff, applicant is
3 agreeing to -- is applicant agreeing to additional
4 activities that are not -- the staff had not
5 requested?

6 MR. KNIGHT: VIS-2 deals with the color
7 treatment of the facility. And the --

8 PRESIDING MEMBER KEESE: And have you
9 dealt with that separately?

10 MR. KNIGHT: Yeah, the architectural
11 treatment that the applicant is speaking about is
12 addressed by the Committee's new condition VIS-7.
13 So maybe what needs to happen, seems logical that
14 some of that architectural treatment needs to be
15 colored and treated consistent with our standard
16 condition, which is shown in VIS-2.

17 So maybe that condition just needs to be
18 amended to say that all project structures
19 excluding any architectural treatment needs to be
20 color treated prior to commercial operation.

21 And then VIS-7, which was added by the
22 Committee, which allows implementation, the 180
23 days after first turbine roll, those structures
24 can be color treated consistent with the condition
25 in VIS-2.

1 MS. LUCKHARDT: I think the --

2 MR. KNIGHT: My fear is that, I mean the
3 way it would read is that essentially the power
4 plant, itself, could sit out there in a primer
5 state, you know, for 180 days after commercial
6 operation until the architectural treatment issues
7 are addressed by the Committee.

8 MS. LUCKHARDT: On the other hand we
9 don't want to paint it twice.

10 HEARING OFFICER WILLIAMS: It sounds
11 like maybe you all can confer and reach some kind
12 of a resolution, and just give us the new
13 language? I don't see that we need to spend time
14 here.

15 MS. LUCKHARDT: We can attempt to do
16 that. We have chatted with staff once about this,
17 and just to make you aware, you know, this is a
18 tight construction schedule, and --

19 HEARING OFFICER WILLIAMS: Yeah.

20 MS. LUCKHARDT: -- we've already had
21 difficulties getting staff to decide what color
22 they wanted structures, including pretreated
23 structures. And there are schedule implications
24 to some of this.

25 HEARING OFFICER WILLIAMS: Yeah, but I

1 think I hear staff saying that they're just -- the
2 architectural treatment is one thing, and you
3 should probably separate that from the standard
4 condition.

5 MR. STEWART: The architectural
6 treatments could include color treatments, and
7 that's where Jane pointed out that we really don't
8 want to paint the facility twice within six
9 months. And we have had difficulty getting staff
10 to agree upon a color for us to order some of this
11 advance equipment.

12 So, we do have a process in place
13 through the agreement with Milpitas, which the
14 agreement also includes oversight by Commission
15 Staff to assure that things are consistent using
16 this --

17 PRESIDING MEMBER KEESE: So, who gets to
18 make the final decision on color?

19 MR. STEWART: Pardon?

20 PRESIDING MEMBER KEESE: Who gets to
21 make the final decision on color, then?

22 MR. STEWART: The process is that the
23 Committee that is established through this
24 agreement will make a recommendation; but
25 Commission Staff has final approval over all of

1 the architectural treatments.

2 PRESIDING MEMBER KEESE: Okay. And does
3 the Committee that makes the recommendation
4 include staff on it?

5 MS. LUCKHARDT: It includes staff,
6 although it is -- staff is not a voting member of
7 that committee, recognizing that staff has final
8 approval authority over the whole facility. And
9 recognizing the Commission's jurisdiction.

10 So, it's a tough measure there.

11 COMMISSIONER BOYD: I need to ask the
12 staff if the local community, through this
13 committee process, decided what color they want
14 the facility. Are we likely to just go along with
15 what the local community wants?

16 MR. KNIGHT: I think we would give them
17 great deference, but if the color they chose
18 contrasted strongly with the setting, and we
19 thought it would cause a significant impact, we
20 would have to --

21 MS. LUCKHARDT: Yeah, they've already
22 disagreed. We originally got approval for gray
23 from the City of San Jose. We got preliminary
24 approval, I think, from staff on gray.

25 They have then decided they wanted earth

1 tones. This is for the cooling tower. But we
2 didn't get a lot of direction on earth tones, so
3 we came back with earth tones. And then they said
4 they didn't like those earth tones.

5 And at some point we have to order the
6 equipment. But it's just telling you that, you
7 know, there have been some differences of opinion
8 already expressed.

9 PRESIDING MEMBER KEESE: And do I gather
10 that we asked that preconstructed equipment come
11 in with a color scheme?

12 MS. LUCKHARDT: Of course.

13 PRESIDING MEMBER KEESE: And then the
14 final is compatible with that, or what?

15 MS. LUCKHARDT: Well, they initially
16 asked for gray, so some of the equipment is coming
17 in in gray. Fortunately, it's lower structures.

18 They have since asked for earth tones,
19 so we're doing what we can to accommodate staff.
20 But there have obviously been some differences of
21 opinion because San Jose initially wanted gray.

22 So, you know, we're just trying to come
23 up with something that will work, that won't hold
24 up getting the facility constructed, --

25 PRESIDING MEMBER KEESE: So, applicant

1 doesn't really care between --

2 MS. LUCKHARDT: What color it is?

3 PRESIDING MEMBER KEESE: -- gray and
4 earth tones? They just want somebody to make up
5 their mind?

6 MS. LUCKHARDT: As long as it is
7 something that we can order efficiently and get
8 put on the facilities. Because the pretreated
9 colors only come in so many colors, and only have
10 so many options. Some are semigloss. Some you
11 can't get in flat.

12 COMMISSIONER BOYD: Has the City of
13 Milpitas --

14 MS. LUCKHARDT: Some come in galvanized.

15 COMMISSIONER BOYD: -- expressed itself
16 at all as to color?

17 MS. LUCKHARDT: The City of San Jose --

18 COMMISSIONER BOYD: Milpitas.

19 MS. LUCKHARDT: The City of Milpitas has
20 not. No. So we have not had an opportunity to
21 get the City of Milpitas' response, and that's
22 what the agreement was to allow.

23 That's why we wanted additional time.
24 Not that we're trying to get out of painting or
25 treating structures. And we're already working

1 with staff to try and come to agreement on
2 pretreatment colors and things that are coming in
3 pretreated and order.

4 But we're just -- we'd also like enough
5 time to work with all the parties involved, and
6 not have to paint it twice.

7 HEARING OFFICER WILLIAMS: So, staff, I
8 don't understand. I mean is your only objection
9 that you want to avoid something sitting there
10 with primer on it? Is that your only objection?

11 MR. KNIGHT: The conditions, as we have
12 always written them, require that projects be
13 painted prior to commercial operation. So I was
14 just trying to maintain that consistency there.
15 And the concern that the colors that it comes in,
16 and sits out there for six months, you know, could
17 contrast with the setting.

18 So, that's why I was suggesting that,
19 because this condition VIS-2 could just exclude
20 any architectural treatment, coloring of
21 architectural treatment. At least the facility,
22 itself, would be painted.

23 HEARING OFFICER WILLIAMS: Well, does
24 staff consider six months to be, you know, --
25 which I guess is the outside limit of time, that

1 it could be left untreated under applicant's
2 proposal. Would you consider that a significant
3 impact on the visual surrounding? A temporary
4 condition of six months?

5 MR. KNIGHT: The criteria that we've
6 used, I think we'd consider that to be a short-
7 term impact, and it would not be, in itself,
8 significant.

9 HEARING OFFICER WILLIAMS: Oh, okay,
10 well, then, you know, I think we ought to try to
11 be flexible to allow applicant to reach a
12 consensus. As long as you don't consider it
13 creating a --

14 MR. KNIGHT: What I would hate for it to
15 do is set a precedent for anything that we might
16 do, you know, in the future, in other cases before
17 us. But, considering --

18 PRESIDING MEMBER KEESE: Yeah, I
19 understand. But this is an expedited case; it's a
20 little different. It's, you know, I think back to
21 some of our 21-day siting cases, and you had no
22 chance --

23 MR. KNIGHT: Right.

24 PRESIDING MEMBER KEESE: -- at anything,
25 so --

1 MR. KNIGHT: Considering the nature of
2 this project, and the time line that they're
3 under, and the deadline of getting it online by
4 the end of the year, I think we could be flexible.

5 MR. RATLIFF: Commissioners, we do have
6 the concern of referencing settlement agreement
7 that none of us have actually seen in final form.

8 We would prefer that there be no tying
9 of the conditions to such an agreement. We would
10 rather that the conditions, themselves, spell out
11 the actual requirements. We think that that can
12 be done easily enough. In fact, we think in VIS-7
13 we proposed language which will allow whatever the
14 agreement should turn out to be to be implemented
15 successfully through that condition.

16 PRESIDING MEMBER KEESE: Okay, does the
17 applicant -- is that acceptable to the applicant,
18 that we take --

19 MS. LUCKHARDT: That's acceptable as
20 long as everyone clearly understands that what
21 we've committed to do is the envelope of what
22 we've committed to do. Because the agreement --

23 PRESIDING MEMBER KEESE: Right, well,
24 there may be something you've agreed to do with
25 Milpitas that we don't care about.

1 But the ones --

2 MS. LUCKHARDT: I think your staff will
3 be involved in that, regardless.

4 COMMISSIONER BOYD: Hopefully there's a
5 lot.

6 MS. LUCKHARDT: Yeah, actually the
7 agreement is straight up. It's the range of, you
8 know, the 1.8 to 2 million which includes the
9 landscaping and the architectural treatments, and
10 it includes this phase, as well as the combined
11 cycle phase.

12 And all of that is the process that
13 staff will be involved in and that Milpitas and
14 the City of San Jose will also be involved in.

15 So it all has to do with visual
16 resources and addressing the issues of concern.
17 So it's very similar to the last agreement. I
18 think Milpitas wanted a floor as well as a
19 ceiling.

20 HEARING OFFICER WILLIAMS: Okay, so I
21 think what staff is saying is we need to just
22 rework the language so that it doesn't refer to
23 the agreement, but it places the language of the
24 agreement into the conditions.

25 And, you know, if you're willing to do

1 that, I don't see --

2 MS. LUCKHARDT: But actually I have
3 that, because we had heard that expressed. We
4 just want to make sure that it's consistent.

5 If this would work for staff, what we
6 would do on our changes, on the applicant's
7 requested changes, we would just delete the first
8 phrase up to the comma, dealing with the
9 agreement.

10 And add, instead of having prior to
11 first turbine roll, it would be 180 days after
12 reaching simple cycle commercial operation date,
13 the project owner shall. And then it should read:
14 a) complete treatment of, just to be consistent.
15 Just to get the language there.

16 HEARING OFFICER WILLIAMS: Oh, okay, so
17 you've already done it throughout?

18 MS. LUCKHARDT: Well, we looked at it
19 after hearing staff's initial comment on our
20 comments. What we would do is just instead of, we
21 would request that the Committee accept our change
22 without the first phrase, which is consistent with
23 the settlement release agreement, that all that
24 could be deleted. And instead, have it read: 180
25 days after reaching simple cycle commercial

1 operation date.

2 If you're looking at our comments,
3 again, you just delete the first phrase talking
4 about the settlement agreement, and begin VIS-2
5 with: 180 days after reaching simple cycle
6 commercial operation date.

7 HEARING OFFICER WILLIAMS: Staff, would
8 you accept that?

9 PRESIDING MEMBER KEESE: You probably
10 want a word like within or something.

11 MR. RATLIFF: I think that's generally
12 acceptable to us. There is some discussion with
13 staff just now as to how ascertainable the
14 commercial operation date is. And that's why we
15 tended to use the term turbine roll. Although,
16 both terms apparently have problems in terms of
17 defining the actual date.

18 MS. LUCKHARDT: We could notify staff of
19 when that is, because the project has to notify
20 DWR. So, we could --

21 MR. STEWART: Right, and Calpine is
22 motivated to notify DWR as early as possible on
23 our commercial operation date.

24 MR. RATLIFF: Then we'll accept that as
25 it is.

1 PRESIDING MEMBER KEESE: Okay, you're
2 going to start with 180 days, or do you want
3 within or something?

4 MS. LUCKHARDT: Within is fine.

5 PRESIDING MEMBER KEESE: Okay.

6 HEARING OFFICER WILLIAMS: Okay.

7 MS. LUCKHARDT: As we look at VIS-2 we
8 would like to also discuss protocol sub (d), which
9 was not in our comments, but has been a concern
10 with regards to Calpine construction of other
11 projects regarding glare on surfaces.

12 This basically relates to the fact that
13 some of these facilities come in galvanized. And
14 that that has been, in some instances, a concern
15 to staff. And painting and treating those
16 surfaces is a concern to project proponents.

17 We would request that staff accept no
18 glare on painted surfaces visible to the public,
19 or something to that effect. And that we resolve
20 the issue of galvanized piping, galvanized lamp
21 posts and stairwells and things like that.

22 So we would request that instead of
23 documentation that the surface to be used on all
24 project elements visible to the public, that
25 instead it read, perhaps, as documentation that

1 the painted surfaces visible to the public will
2 not create glare. To address something that we
3 can actually deal with.

4 MR. KNIGHT: I guess I'd prefer that it
5 reads something like provide documentation that
6 surfaces visible to the public will not create
7 glare, unless it's not feasible to provide those
8 surfaces in a non-glare, and then provide the
9 justification for why the applicant cannot do it.

10 PRESIDING MEMBER KEESE: Except for
11 unpainted --

12 MR. KNIGHT: Well, I --

13 PRESIDING MEMBER KEESE: -- that it's
14 not feasible to --

15 MR. KNIGHT: Right. That it's not
16 feasible; that some structures may, like some of
17 the piping and such, maybe you cannot paint it
18 because of, you know, its temperature or something
19 like that, but at least there's documentation
20 provided to the staff that we can evaluate.

21 I mean the condition that was accepted
22 by, you know, Calpine during the licensing phase
23 it says, you know, to not create glare. And
24 that's been a pretty standard condition.

25 MS. LUCKHARDT: Yeah. The reason we

1 bring it up is that it's been an incredibly
2 difficult condition to address in the field. And
3 that's the information we're getting back from the
4 Calpine folks in the field, is that there's been
5 ongoing issues between staff and folks in the
6 field on what creates glare, and what doesn't
7 create glare. And --

8 PRESIDING MEMBER KEESE: Okay, so but I
9 hear staff is willing to accept --

10 MS. LUCKHARDT: Accept it if it's --

11 PRESIDING MEMBER KEESE: -- an exception
12 for surfaces that can't be painted. Can't
13 practically be painted or something like that.

14 MR. STEWART: I appreciate your
15 recognizing that high temperature paint doesn't
16 come in a matte finish.

17 MR. WORL: Nonglare, no.

18 (Laughter.)

19 MR. STEWART: And that's very good. The
20 only difficulty that I have with your proposed
21 solution is you say it's not feasible. I mean
22 what we're looking at in addition is galvanized
23 surfaces examples such as lamp posts, stairs,
24 things like that, that are typically galvanized.
25 They're not painted.

1 Yes, it is feasible to paint them, but
2 is it practical. And do they create glare. Those
3 are the kinds of things that we would be looking
4 at. It becomes a little more problematic.

5 MR. KNIGHT: And is it feasible to get
6 those items in nonglare?

7 MR. STEWART: Nonglare galvanized?

8 MR. KNIGHT: Yeah. I mean -- well, is
9 it the only thing they come is galvanized? Is
10 there other materials --

11 MR. STEWART: Well, you typically go
12 with --

13 MR. KNIGHT: -- that they --

14 HEARING OFFICER WILLIAMS: Visible to
15 the -- excuse me, excuse me, excuse me. Before we
16 get into a hot debate on that, --

17 (Laughter.)

18 HEARING OFFICER WILLIAMS: -- it seems
19 to me that the language in here about visible to
20 the public provides some restrictions built in.

21 MR. KNIGHT: That's true.

22 HEARING OFFICER WILLIAMS: So, I mean if
23 it's not visible to the public, who cares? So,
24 why don't we focus on the language that staff
25 proposes, which is -- can you read something to me

1 that we can start off with, and try to reach an
2 agreement on?

3 MR. RATLIFF: Mr. Williams, if it's your
4 direction we would be glad to basically talk to
5 the applicant and write some language that we can
6 both agree to that --

7 HEARING OFFICER WILLIAMS: Yeah.

8 MR. RATLIFF: -- serves this purpose.
9 We don't have to do it right now.

10 HEARING OFFICER WILLIAMS: Yeah, you
11 know, I think --

12 PRESIDING MEMBER KEESE: I think you
13 should be able to do that.

14 HEARING OFFICER WILLIAMS: Yeah.

15 COMMISSIONER BOYD: Does the concept of
16 visible to the public give the applicant any
17 heartburn?

18 MS. LUCKHARDT: It still relates to
19 anything that might be up high, a higher structure
20 of --

21 COMMISSIONER BOYD: Right, like light
22 standards?

23 MS. LUCKHARDT: Light standards or
24 stairwells or testing platforms around stacks.
25 I'm just guessing on that stuff, you know,

1 different things that -- but I believe visible to
2 the public has been interpreted broadly. And so
3 we do want to be careful with that. Because we
4 are 1000 feet from any --

5 PRESIDING MEMBER KEESE: Well, let me
6 ask, I can understand the implication of this
7 subparagraph because it says on all project
8 elements.

9 MS. LUCKHARDT: Right.

10 PRESIDING MEMBER KEESE: Do we mean all
11 major project elements? I mean would that be
12 helpful or --

13 MR. KNIGHT: Well, I mean, I don't know
14 if you've ever seen the Sutter Power Plant in the,
15 you know, the daytime. There's quite a bit of
16 piping up on top of the HRSG that catches a lot of
17 sunlight, and it causes a lot of glare.

18 I know that there's some difficulties in
19 painting that, reluctance to paint some of that.
20 So, that's why I was trying to get something in
21 there that says that, you know, if it's not
22 feasible to do so, or applicant says it's not
23 practicable --

24 PRESIDING MEMBER KEESE: Why don't you
25 guys --

1 MR. KNIGHT: -- you know, something like
2 that. Because those are -- I would consider those
3 major structures.

4 PRESIDING MEMBER KEESE: Let's have
5 applicant and staff work out something like that.

6 MS. LUCKHARDT: Yeah.

7 PRESIDING MEMBER KEESE: Okay.

8 MS. LUCKHARDT: Yes, and we appreciate
9 staff's willingness to be flexible on that in that
10 respect.

11 HEARING OFFICER WILLIAMS: Yeah, just,
12 you know, if you can, try to work it out as soon
13 as possible and get it to us so we can --

14 MR. RATLIFF: We'll try to work it out
15 today.

16 HEARING OFFICER WILLIAMS: Yeah, thank
17 you.

18 MS. LUCKHARDT: Yeah, I don't --
19 hopefully, it sounds -- anyway, I'll stop.

20 Okay, then as we move through looking at
21 the remainder of the visual comments, I think --
22 yeah, VIS-3 we had some comments. VIS-3, staff
23 had some comments in some instances.

24 It looks like they do not necessarily
25 conflict, that's my understanding as I'm looking

1 at them now. We had added in the protocol
2 references to the agreement, which we understand
3 is not preferred by staff.

4 So, in order to address that, we would
5 suggest some changes to our changes to the
6 protocol to see if this would be acceptable to
7 staff.

8 Our protocol has a first line with some
9 edits. As you get down into the redline, it's on
10 page 15 of our comments, bottom of the page:
11 Project owner shall submit a final landscaping
12 plan that has been approved by the" and we suggest
13 maybe just using project architectural committee
14 just to address that committee that will be
15 created. Because that's where it will be coming
16 from.

17 I don't know if that's objectionable to
18 staff. We just lost Dick, so who knows?

19 And then ending the sentence where the
20 comma is, project architectural committee period.
21 And deleting the phrase, "which the applicant is
22 required to establish pursuant to the terms of the
23 agreement."

24 To pull the reference to the agreement
25 out of that section. It still references the plan

1 presented by Dr. Priestley and that as the
2 starting point.

3 And then we would have a similar change
4 to our edits of the verification. In the
5 verification it's a redline: final project
6 landscape plan shall be prepared under the
7 direction of the" and we would add "project
8 architectural committee." And then place a period
9 there, and delete the remainder after the comma,
10 "which the applicant is required to establish
11 pursuant to the terms of the agreement." We would
12 delete all of that.

13 PRESIDING MEMBER KEESE: Staff?

14 MR. KNIGHT: I don't have any objections
15 to those changes.

16 HEARING OFFICER WILLIAMS: The deletion
17 would cover just that clause which the
18 applicant --

19 MS. LUCKHARDT: Right, "is required to
20 establish pursuant to the terms of the agreement."

21 HEARING OFFICER WILLIAMS: And then you
22 would pick up again with your redline, "at least?"

23 MS. LUCKHARDT: Yeah.

24 HEARING OFFICER WILLIAMS: Okay.

25 MR. WORL: There's additional language

1 suggested in that verification which also
2 references the agreement later on. Do you want to
3 strike that, as well?

4 MS. LUCKHARDT: We can. We presume that
5 it would come back to staff. I mean if you
6 have --

7 PRESIDING MEMBER KEESE: So just strike
8 the --

9 MS. LUCKHARDT: We're really trying to
10 respond to staff's concerns, so if you guys have a
11 concern with that language --

12 MR. STEWART: We'll just get rid of
13 that --

14 PRESIDING MEMBER KEESE: So strike the
15 words "as specified in the agreement?"

16 MS. LUCKHARDT: We could delete that
17 whole sentence.

18 MR. STEWART: Start with the "if."

19 PRESIDING MEMBER KEESE: Start with the
20 "if?"

21 MR. STEWART: Yeah, "If the CPM does not
22 approve."

23 MS. LUCKHARDT: You can just delete it.
24 Oh, wait, "If the CPM does not approve?"

25 MR. STEWART: Right.

1 MS. LUCKHARDT: You want to leave that
2 in?

3 MR. STEWART: Um-hum.

4 MS. LUCKHARDT: Okay.

5 MR. STEWART: Because they can do that
6 anyway.

7 MS. LUCKHARDT: All right.

8 HEARING OFFICER WILLIAMS: Okay, that's
9 in, so pick up with "if".

10 MS. LUCKHARDT: Okay. Then in VIS-4 we
11 propose splitting out the lighting review
12 requirements for construction and operation. And
13 so we just split the condition into two
14 paragraphs, the verification into two paragraphs
15 to address construction in one instance, and
16 operation in another. Just to make it clear to
17 everybody.

18 And I guess I'd want to know if staff
19 has any concern about that.

20 MR. KNIGHT: No, that's fine, that's
21 clear.

22 MS. LUCKHARDT: And then we're shifting
23 to VIS-5 where it looks like we made
24 approximately, if not exactly, the same change.
25 We also ask that a timing change be made from 60

1 days to 30 days.

2 And then in VIS-6, we ask that the
3 timing change be changed from 60 to 30. We
4 understand that at least at one time was
5 acceptable. And it looks like we are both
6 referring to the cooling towers of the cooling
7 system, and so either change in that instance
8 would be fine. Both addressing the cooling
9 towers.

10 And then we get to VIS-7. Bob, you have
11 more substantial comments on the need for VIS-7.
12 I don't know if you want to take that, or if you
13 want Dick to take that?

14 MR. WORL: We could --

15 MS. LUCKHARDT: There's Dick. Do you
16 want to address VIS-7?

17 MR. RATLIFF: I don't know what you've
18 already said, but --

19 MS. LUCKHARDT: I haven't said --

20 MR. WORL: Just got to it.

21 HEARING OFFICER WILLIAMS: You're lucky,
22 we haven't said anything.

23 MR. WORL: I was just getting ready
24 to --

25 MR. RATLIFF: It seems apparent what the

1 Committee is trying to achieve by this, and we
2 wanted to assist that, realizing that the Milpitas
3 agreement has been approved, and is part of the
4 landscape.

5 What we propose to do is replace the
6 proposed condition and verification -- the
7 verification we thought, in particular, may be
8 problematic because it was taken from the Metcalf
9 decision verbatim. And we think it may lead to
10 implementation problems that would prevent the Los
11 Esteros project from meeting its other conditions,
12 including the condition that is being imposed that
13 it be online by the end of the year.

14 So, we'd hoped to try to essentially
15 remedy that by some new language which would
16 simply just set forth the very straightforward
17 requirement that would be, we think, consistent
18 with the implementation of the Milpitas agreement.

19 HEARING OFFICER WILLIAMS: Are you okay
20 with that, applicant?

21 MS. LUCKHARDT: In general we're fine
22 with staff's changes. We have -- if you discard
23 our comments on VIS-7, and we'll work off of
24 staff's proposed VIS-7, just to start somewhere,
25 at the end of the verification we would like to

1 make that consistent with the requirements in the
2 agreement, which is 180 days after simple cycle
3 commercial operation date.

4 MR. RATLIFF: We have no problem with
5 that.

6 MS. LUCKHARDT: Instead of first turbine
7 roll.

8 HEARING OFFICER WILLIAMS: Well, when
9 you confer, why don't you all just work out the
10 language.

11 MS. LUCKHARDT: Yeah, this is the only -
12 - VIS-7 is the last of our comments, and we can
13 give you a revision to that. We would also like
14 to have the condition VIS-7 reflect the San Jose
15 general plan requirements of interesting and
16 attractive design qualities, as opposed to better
17 integrate the project into the visual environment.

18 We would like to rely on the City of San
19 Jose's general plan policies as kind of the
20 guiding principle for staff in evaluating the
21 information that comes before them, if that's
22 acceptable to them. And they were basically from
23 the City of San Jose policy number 4, interesting
24 and attractive design qualities, and promotes a
25 high standard of architectural excellence in

1 evaluating the plan.

2 So, if that's acceptable, those types of
3 comments are acceptable with staff, we'd like to
4 incorporate that, as well.

5 HEARING OFFICER WILLIAMS: Staff?

6 MR. RATLIFF: We think that's
7 acceptable, and what we would propose to do is
8 give you some more draft language on that that
9 would reflect that agreement.

10 HEARING OFFICER WILLIAMS: Thank you.
11 That would be great.

12 MS. LUCKHARDT: So we'll be giving you,
13 I guess, draft language on VIS-3 and VIS-7 -- VIS-
14 2.

15 HEARING OFFICER WILLIAMS: VIS-2.

16 MS. LUCKHARDT: Sorry. VIS-2,
17 subparagraph (d), as Todd's correcting me. And
18 VIS-7. And those are the two things.

19 And that completes our comments, as well
20 as our comments on staff's comments.

21 HEARING OFFICER WILLIAMS: Thank you
22 very much.

23 Do we need a break at this point? Let's
24 go off the record.

25 (Off the record.)

1 HEARING OFFICER WILLIAMS: Okay, where
2 did we leave off?

3 MS. LUCKHARDT: I think we've actually
4 finished going through our comments --

5 HEARING OFFICER WILLIAMS: Oh, yes, you
6 had completed your presentation. Thank you very
7 much.

8 Staff, I guess you have some --

9 MR. WORL: Through the process that we
10 went through today we pretty much dealt with our
11 comments, as well.

12 HEARING OFFICER WILLIAMS: Oh, great.

13 MR. WORL: I don't think that we had --
14 nothing that was controversial in what we've
15 submitted. Most of what we had submitted was
16 clarifications, with the exception of those things
17 that we've discussed here.

18 HEARING OFFICER WILLIAMS: Okay.

19 MR. WORL: So I can't think of anything
20 else, other than the work that we have to do
21 together on the visual conditions of cert.

22 PRESIDING MEMBER KEESE: The essence of
23 which is to take away specific reference to the
24 agreements, and to --

25 MR. WORL: Reference to the agreement,

1 itself; and also to deal with the issue of the
2 item (b), I believe it is, the glare issue. And
3 then also the condition of cert VIS-7, reworking
4 that slightly, so that we're in agreement.

5 HEARING OFFICER WILLIAMS: Great, thank
6 you very much, sir.

7 And I think with that we have some
8 public comment.

9 PRESIDING MEMBER KEESE: Yes, and I
10 think they stepped outside for a moment.

11 MS. LUCKHARDT: Can I ask, while they're
12 outside, we would like to have the decision
13 finalized as much as it can on July 2nd. Is it
14 possible to get signatures and everything so the
15 construction can start July 3rd?

16 HEARING OFFICER WILLIAMS: Yeah, I think
17 we can do that. I'd like to see that happen.
18 So, --

19 MS. LUCKHARDT: If there's anything that
20 we can do to help --

21 HEARING OFFICER WILLIAMS: We'll --

22 MS. LUCKHARDT: Okay.

23 HEARING OFFICER WILLIAMS: Yeah, that's
24 our goal, and we'll try to have, along with the
25 errata, we'll try to produce a corrected copy, or

1 corrected version that can be signed and made
2 available to folks at the hearing.

3 MS. LUCKHARDT: That's wonderful; we
4 appreciate that.

5 HEARING OFFICER WILLIAMS: Not a
6 problem.

7 (Pause.)

8 PRESIDING MEMBER KEESE: Okay, we've
9 completed our proceeding here pretty well. The
10 staff and applicant are going to submit to us
11 revised language on VIS-2 and 7.

12 The Kochs are here in the audience, and
13 have some comments or questions. Why don't you
14 take the microphone here, introduce yourself for
15 the record, and just ask us whatever you'd like
16 and we'll see what we can do about getting an
17 answer. Thank you for joining us.

18 MR. KOCH: Thanks for the opportunity.

19 MS. KOCH: I'm Zeynep Koch, and we just
20 moved to the Alviso area. And I work in Sun
21 Microsystem, which is close to that area.

22 MR. KOCH: And my name is Bud Koch.
23 Since November we live in the area. We recently
24 learned through a paper article that this plant
25 was going on. And we inquire some information

1 through Public Adviser Office.

2 And we are here to ask some questions.

3 MS. KOCH: Can we go ahead?

4 PRESIDING MEMBER KEESE: Feel free.

5 MS. KOCH: Okay.

6 MR. KOCH: Fair enough. So, we don't

7 know much of the details; I mean it's a thick PMPD

8 obviously. But from a general sense point of

9 view, what is the financial liability of the

10 plant? And we are asking that question because

11 what if the investment cannot be realized and the

12 plant just gets stopped in the middle. And then

13 there is a quite a bit requirement in the PMPD.

14 What happens?

15 PRESIDING MEMBER KEESE: Let me answer

16 generally speaking that this, as you said, you

17 recently moved into the community. On all our

18 cases, and cases like this, we start the

19 process -- the applicant generally starts with the

20 community with notification first.

21 We start with a site visit and an

22 informational hearing. And then we have workshops

23 in the community. So all questions like this can

24 be answered.

25 But we're happy to try to answer your

1 questions. I think I would reference first of all
2 the fact that the Energy Commission has the
3 responsibility of this plant, if we license it,
4 from beginning to end.

5 Our staff has a responsibility to see
6 that if this plant closes the property goes back
7 to where it started. So, in general, if you're
8 asking what would happen if the plant's half way
9 through, the applicant will take it back to square
10 one at that point.

11 Now, perhaps, I don't know if --

12 MS. LUCKHARDT: I think you actually
13 have a condition to that effect in this project,
14 and --

15 PRESIDING MEMBER KEESE: Right, now --

16 MS. LUCKHARDT: -- we're trying to pull
17 that right now.

18 PRESIDING MEMBER KEESE: If applicant
19 would like to talk about the -- your incentives to
20 build this plant, there are things that we have
21 publicly noticed, which is that there is a major
22 settlement between the applicant and the State of
23 California under which there are certain
24 obligations.

25 MR. STEWART: Yes. The power facility

1 that we are building there in the area of the old
2 greenhouses is -- we do have a negotiated power
3 supply agreement with the State of California that
4 affords Calpine some financial stability for the
5 facility for the first three years of production.

6 In addition to that, the facility,
7 itself, is being designed as the name suggests, a
8 critical energy facility. And the design and the
9 desire is that this facility go in first, and then
10 secondly a host facility. And right now we're
11 looking at a server farm, large, high security,
12 high reliability datacenter will be built to be
13 the primary focus of the energy that is produced
14 by this power plant after the conclusion of the
15 Department of Water Resources contract.

16 MR. KOCH: And when you look at the
17 PMPD, though, just based on that information,
18 there is a doubt that this USD can go ahead and be
19 built. So, is that still a plan? Is this
20 happening? Is this going to go ahead?

21 MR. STEWART: There's still developers,
22 and the agreements that are being negotiated are
23 highly confidential at the time, but, yes,
24 development is still proceeding for the
25 datacenter.

1 MR. KOCH: Under the current economic
2 situation, this is quite a risky call, wouldn't
3 it?

4 MR. STEWART: Yes.

5 MR. KOCH: So from a visual resources
6 point of view, then I think it's on page 415, if
7 the USD doesn't go ahead, then the visual
8 resources would be against what Milpitas was
9 asking, I believe, isn't that right?

10 MR. STEWART: Actually, no. The
11 agreement that Calpine has that we recently
12 negotiated with Milpitas addresses the visual
13 impacts, or the alleged visual impacts of the
14 facility in the event that the Dataport facility
15 is not built.

16 And that was really the reason for the
17 settlement agreement.

18 MR. KOCH: And -- I understand that. In
19 the event that USD is not built, then what LECEF,
20 or how you call it, the project, is it still
21 viable?

22 MR. STEWART: Yes, --

23 MR. KOCH: In terms of the primary
24 objectives?

25 MR. STEWART: Yes, it is.

1 MR. KOCH: And there was another
2 argument made like it's going to open lot of job
3 opportunities for the community. I cannot see
4 where. Can you just explain it a bit? Because in
5 terms of -- that's in reference to paper article.
6 I can bring out --

7 MR. STEWART: Okay, I think I know which
8 article that you're speaking of, and for the
9 construction we are using all local union labor
10 forces, many of which will be from the Alviso
11 area, we presume.

12 In addition, items such as local
13 facility support, catering, things like that,
14 we're targeting Alviso for that. You know, down-
15 the-road jobs as they come available, while we
16 cannot guarantee any jobs for Alviso, we certainly
17 are going to do outreach to the area saying this
18 is what the qualifications are, and that Calpine
19 will hire based on the best qualified individual
20 for the --

21 MR. KOCH: But, yeah, just from a basic
22 understanding point of view, the impact on the job
23 market will be minimal?

24 MR. STEWART: That's correct. There are
25 not a lot of long-term jobs associated with a

1 power facility.

2 MR. KOCH: Right.

3 MS. KOCH: I just want to comment, as
4 well, that as new residents of Alviso, you know,
5 we love that city. And there is a big residential
6 developments happening. I know in the articles,
7 the old information, the income of those people
8 are now higher and those people love that area and
9 they want to develop and actual live in a nice
10 area.

11 I just want to highlight that because it
12 was saying it's a low-income, it's not really
13 impacting that much. But it's going to impact our
14 living there, and it's going to impact the visual
15 as well as an environment. It will impact the
16 residential area, which is now growing.

17 Just wanted to highlight that. So
18 they're opposing it, if that makes a difference.

19 MR. STEWART: Just so you know, we have
20 worked very closely with the community leaders in
21 Alviso over the past several years.

22 MS. KOCH: Unfortunately, yeah, that was
23 maybe awhile ago. Right now there's completely
24 different set of people living there.

25 MR. KOCH: Yeah, it's certainly -- I

1 think we are compelled to make the point that in
2 the last 12 months the face of Alviso has changed
3 significantly. The people have changed. There
4 are lots of newcomers, lots of influential people
5 are moving in.

6 And they are all on the side of
7 preventing the nature, the environment. And just
8 because there were just a few people who could not
9 raise their voices in Alviso two years ago, the
10 conditions were different.

11 We are just making the point here that
12 it is very important for the staff to realize that
13 it is a significant group establishing and
14 residentials are happening, who are mindful of the
15 environment and the nature.

16 So, please, please, not that. It is not
17 two years ago, Alviso two years ago.

18 PRESIDING MEMBER KEESE: Thank you.
19 Thank you. Appreciate your comments.

20 COMMISSIONER BOYD: Mr. Chairman, I'd
21 like to -- is the last name Koch?

22 MR. KOCH: Koch.

23 MS. KOCH: Koch.

24 COMMISSIONER BOYD: Koch, I'm sorry. I
25 wrote it down that way.

1 Just a couple of comments. You know, we
2 have to sit up here and not be proponents or
3 opponents of a project, but to hear all the
4 evidence. And we're still in that process.

5 But you've gone to great pains to come
6 here, and you deserve some explanation for this
7 just for that effort.

8 But something you said actually bothered
9 me a little bit, and that was a person could infer
10 from what you said that because the area perhaps
11 was allegedly low income it's okay to put a power
12 plant there. But now that it's becoming a middle
13 income group, the world has changed.

14 And I want you to understand that the
15 criteria, the rules, the view that this body
16 takes, or that the State of California takes to
17 power plants, and where they're needed and their
18 visual impacts upon a community bears no bearing
19 on the income groups or whether it's a low income
20 group.

21 There's no desire to put power plants in
22 low income groups vis-a-vis anywhere else they're
23 needed. This is an unusual power plant in that it
24 was drawn into this, as you say, by the server
25 farm. And now the economy is such that that may

1 or may not take place.

2 You know, we had a public hearing. We
3 discussed with the owner, the proponent of that
4 server farm, his plans. He was uncertain. He
5 still has the desire to do so. But as addressed
6 by the applicant, the visual aspects of the plant
7 have been addressed in greater detail perhaps than
8 they would have been had the server farm
9 definitely come into place.

10 But let me reference where you live with
11 respect to its need for electricity. And the fact
12 that we have to have power plants, and we do the
13 best we can to site them, aesthetically and
14 geographically, et cetera, et cetera.

15 But the Bay Area in which you live is
16 unfortunately one of the weaker areas of the state
17 with regard to the ability to deliver electricity,
18 unfortunate recipients of that infamous June
19 blackout of a year, couple years ago, et cetera,
20 et cetera.

21 So nobody wants a power plant where
22 they're living. We face the dilemma of providing
23 enough electricity for the citizens of the state;
24 and to provide it in areas where it's needed and
25 so on and so forth.

1 So that is the job we're dealing with.

2 And the fact that your community is growing does
3 nothing more than increase the demand for
4 electricity.

5 So, we try to weigh all those concerns
6 and come up with the best possible compromise. I
7 just want you to understand what it is we deal
8 with when we go through these lengthy processes to
9 site power plants and to provide that they are as
10 acceptable as possible, under the circumstances,
11 to the Committee, in which they are ultimately
12 constructed.

13 MR. KOCH: Hopefully with your role int
14 he process we would trust that those comments are
15 totally credited.

16 Our reference to Alviso is that we don't
17 know what the process was about two years ago when
18 it started, whether there was good representation
19 out of the community or not.

20 Of course, the decision should not be
21 based on whether the community is low income or
22 middle income or high income. But there's
23 certainly a process in between who can influence
24 the decision more and less. We appreciate that
25 fact, also.

1 PRESIDING MEMBER KEESE: Let me just
2 mention one thing, if you're interested in
3 following the process, because this is a two-stage
4 power plant. And the applicant, Calpine, has
5 indicated that as soon as they start construction
6 of this, and that'll be the contract crew, they
7 will be back in here to apply for a stage two, to
8 complete the power plant.

9 You'll have, at that point, you'll have
10 a full opportunity to participate --

11 MR. KOCH: Right, we noted that.

12 PRESIDING MEMBER KEESE: -- at all the
13 steps, workshops and everything, which will take
14 place in the community.

15 MR. KOCH: We are already communicating
16 in the community, not us, ourselves, but other
17 neighbors and new residents like us, just every
18 month coming in. And everybody is very aware now,
19 becoming very aware, actually, what's going on.

20 And nothing -- I mean hopefully
21 everything is going to be according to the plan,
22 and the requirements are met.

23 One major question here, why wouldn't
24 the power plant be not made outside of, or
25 constructed outside of Alviso or Milpitas or

1 residential areas down San Jose somewhere south
2 where there is no residential whatsoever. Why
3 right in the middle of the city?

4 PRESIDING MEMBER KEESE: You know, the
5 best -- I don't know who I would refer you to.
6 Staff, perhaps. But certainly our Public Adviser.
7 This is not the only power plant going in. The
8 numbers that we've heard, you know, that the area
9 uses 3000 and generates 300. There's a great need
10 for power in that area.

11 And you've got the Metcalf, and you've
12 got this one, and you're going to have others, not
13 right in your area, but there are a number of
14 power plants that are needed in the whole area.

15 MR. KOCH: Interesting.

16 PRESIDING MEMBER KEESE: Well, thank
17 you.

18 MS. KOCH: Thanks very much.

19 PRESIDING MEMBER KEESE: Thank you.

20 MR. KOCH: Thank you for the
21 opportunity.

22 PRESIDING MEMBER KEESE: I believe this
23 ends -- anybody else have anything else to say?
24 Major, are we --

25 HEARING OFFICER WILLIAMS: I think we're

1 done.

2 PRESIDING MEMBER KEESE: We're done.

3 Thank you, everybody.

4 HEARING OFFICER WILLIAMS: Thank you
5 very much.

6 (Whereupon, at 11:08 a.m., the
7 conference was concluded.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

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